



## DELAWARE RIVER BASIN COMMISSION

### 18 CFR Part 410

#### NOTICE OF FINAL RULEMAKING

Amendments to the *Water Quality Regulations, Water Code and Comprehensive Plan* to Update Water Quality Criteria for pH

AGENCY: Delaware River Basin Commission

ACTION: Final Rule

SUMMARY: By Resolution No. 2013-9 on December 4, 2013, the Delaware River Basin Commission (“DRBC” or “Commission”) approved amendments to the Commission’s *Water Quality Regulations, Water Code and Comprehensive Plan* to update the Commission’s stream quality objectives for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

DATES: This regulation is effective [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register of Regulations as of [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Pamela M. Bush, Commission Secretary and Assistant General Counsel by phoning 609-883-9500 Ext. 203, or by email to [pamela.bush@drbc.state.nj.us](mailto:pamela.bush@drbc.state.nj.us).

**SUPPLEMENTARY INFORMATION:** The Delaware River Basin Commission is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

Notice of the proposed amendments appeared in the **Federal Register** (78 FR 58985) on September 25, 2013 as well as in the Delaware Register of Regulations (17 DE Reg. 365) on October 1, 2013, the New Jersey Register (45 N.J.R. 2201) on October 7, 2013, the New York State Register (page 13) on October 9, 2013 and the Pennsylvania Bulletin (43 Pa.B. 5995) on October 12, 2013. Notice of the proposed changes also was published on the Commission's web site on September 20, 2013. A public hearing was held on October 24, 2013 and written comments were accepted through November 21, 2013. No written or oral comments were received.

The Commission's current criteria for pH in interstate streams were adopted in 1967. Today, these criteria are inconsistent with scientists' increased understanding of natural fluctuations in freshwater and saltwater pH levels and with modern applications of pH criteria. The amendments approved by the Commission on December 4, 2013 will minimize regulatory inconsistencies and better address natural pH cycles in the main

stem Delaware River. First, they will increase from 6.0 to 6.5 the lower threshold of the range of acceptable pH conditions in non-tidal zones of the main stem – DRBC Water Quality Zones 1A through 1E. Second, they will add a clause to the pH criteria for all interstate tidal and non-tidal water quality zones, recognizing natural deviations outside the 6.5 to 8.5 pH range. In accordance with these changes, the pH criteria for Water Quality Zones 1A through 1E (the non-tidal main stem) and 2 through 6 (the tidal main stem and tidal portions of tributaries) will read, “Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions.”

The affected sections of the commission's *Water Code and Water Quality Regulations* consist of subsection C.3 of each of sections 3.20.2 through 3.20.6, respectively, for Water Quality Zones 1A through 1E (non-tidal main stem); and sections 3.30.2 through 3.30.6, respectively, for Water Quality Zones 2 through 6 (tidal main stem and tidal portions of tributaries). (The affected sections relating to Water Quality Zones 1A through 1E were incorrectly identified as sections 2.20.2 and 2.20.6 in the Notice of Proposed Rulemaking. Sections 2.20.2 through 2.20.6 of the *Water Code* are part of an unrelated article; no sections numbered 2.20.2 through 2.20.6 exist in the *Water Quality Regulations*.)

The complete text of Resolution No. 2013-9, the *Water Code*, the *Administrative Manual Part III - Water Quality Regulations*, a basis and background document setting forth the technical basis for the amendments, and additional documents concerning pH criteria for interstate non-tidal and tidal reaches of the main stem Delaware River are available on the Commission's website, DRBC.net. Copies also may be obtained from

the Commission's Secretary and Assistant General Counsel at the telephone number and email address listed above. A charge for printing and mailing may apply.

#### List of Subjects in 18 CFR Part 410

Incorporation by reference, Water audit, Water pollution control, Water reservoirs, Water supply, Watersheds.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends part 410 of title 18 of the Code of Federal Regulations as follows:

#### **Part 410 – BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL – PART III WATER QUALITY REGULATIONS**

1. The authority citation for part 410 continues to read:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. In § 410.1, revise paragraph (c) to read as follows:

#### **§ 410.1 Basin regulations – Water Code and Administrative Manual – Part III Water Quality Regulations.**

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(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to regulations contained within the Delaware River Basin Water Code with Amendments Through December 4, 2013 and the Administrative Manual – Part III Water Quality Regulations with Amendments Through December 4, 2013. Both the Delaware River Basin Water Code and the Administrative Manual – Part III Water Quality Regulations are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or

inspect copies at the Delaware River Basin Commission (DRBC), 25 State Police Drive, West Trenton, New Jersey 08628-0360, 609-883-9500, <http://www.drbc.net>, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: May 1, 2014

PAMELA M. BUSH, ESQ.

Commission Secretary and Assistant General Counsel

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